

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CRAIG BRUNELLE,)
)
 PLAINTIFF)
)
 v.)
)
 CYRO INDUSTRIES, FLOYD)
 PHILLIPS, DREW SCOTT)
 AND MIKE BLOKLAND,)
)
 DEFENDANTS)

CIVIL No. 01-292-P-H

ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION

Employer Cyro Industries obtained summary judgment against former employee Craig Brunelle on his claim of retaliatory discharge (Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2601, et seq., and Maine Family Medical Leave Requirements law ("MFMLR"), 26 M.R.S.A. § 843, et seq.). As a result, Cyro filed a motion in limine to exclude evidence of Brunelle's post-discharge lost wages and benefits. Defs.' Mot. Limine (Docket No. 34). Relying on Hite v. Biomet, Inc., 53 F. Supp. 2d 1013, 1025 (N.D. Ind. 1999), I concluded that, without retaliation, Brunelle was not entitled to lost wages or benefits after his discharge. Uncertain whether there had been any loss before discharge, I ordered the parties to show cause why I should not dismiss the lawsuit altogether. Order (12/16/02) (Docket No. 45). After the parties responded, I heard oral argument on January 15, 2003.

During the hearing, I became persuaded that Brunelle's case is distinguishable from Hite. I therefore **DENIED** Cyro's motion to exclude evidence of post-discharge lost wages and benefits and permitted the remainder of the case to proceed to trial (now scheduled this month). Unlike Brunelle, the employee in Hite asserted only a retaliation claim, namely, her discharge for failing to report to work or provide her employer with continuing medical certification after her protected leave expired. Hite, 53 F. Supp. 2d at 1016. The Hite court concluded that this failure by the employee was a superseding and legitimate reason justifying her discharge and wiped out the claim for post-discharge lost wages and benefits. Id. at 1025-26. Here, Brunelle has a separate claim from retaliation, arguing that Cyro denied him substantive rights under the FMLA and MFMLR in refusing him leave and that, but for the refusal, he would not have been discharged (even though the discharge was not illegally motivated, given the failure of his retaliation claim). The FMLA¹ permits an employee to recover damages from an employer who unlawfully interferes with the employee's right to take leave, 29 U.S.C. §§ 2615(a), 2617(a)(1)(A)(i), even where there is no improper motive. See Hodgens v. Gen. Dynamics Corp., 144 F.3d 151, 159 (1st Cir. 1998); see also Smith v. Diffie Ford-Lincoln-Mercury, Inc., 298 F.3d 955, 960-61 (10th Cir. 2002); King v. Preferred Technical Group, 166 F.3d 887, 891 (7th Cir. 1999). In particular, an employee is entitled to damages, such as lost wages and benefits, where the

¹ As the defendants pointed out in their Motion in Limine (Docket No. 34), lost wages and benefits are not at issue with respect to Brunelle's state law claim because remedies under the MFMLR are limited to equitable relief and liquidated damages in the amount of \$100 per day for each day the violation continues. 26 M.R.S.A. § 848.

employee proves a “causal relation between her FMLA leave and her dismissal.” Smith, 298 F.3d at 961. As a result, Brunelle may present evidence that he was entitled to FMLA leave and that Cyro terminated him for taking that leave to which he was entitled, resulting in lost wages and benefits.

SO ORDERED.

DATED THIS 6TH DAY OF MAY, 2003.

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

U.S. District Court
District of Maine (Portland)
Civil Docket For Case #: 01-CV-292

CRAIG BRUNELLE
plaintiff

JEFFREY NEIL YOUNG, ESQ.
MCTEAGUE, HIGBEE, MACADAM, CASE,
WATSON & COHEN
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(207) 725-5581

v.

CYRO INDUSTRIES
dba
CYRO INDUSTRIES
aka
CYTEC PLASTICS INC.
defendant

MELISSA A. HEWEY, ESQ.
DRUMMOND, WOODSUM & MACMAHON
P.O. BOX 9781
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and

FLOYD PHILLIPS
defendant

MELISSA A. HEWEY, ESQ.
(See above)

DREW SCOTT
defendant

MELISSA A. HEWEY, ESQ.
(See above)